

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

DONALD C. HUTCHINS)
)
Plaintiff)
)
v.)
)
CARDIAC SCIENCE, INC., <u>et al.</u> ,)
)
Defendants)
)

Civil Action: **04-30126-MAP**

**MEMORANDUM IN SUPPORT OF PLAINTIFF'S *INSTANTER* REPLY BRIEF
IN ANSWER TO DEFENDANT COMPLIANT CORPORATION'S OPPOSITION
TO MOTION FOR DECLARATORY JUDGMENT**

I. Burden of Proof.

"One who asserts the defense of *res judicata* has the burden of proving by a preponderance of evidence that an issue was previously raised and decided by a tribunal in a prior cause of action. See Worrie v. Boze, 198 Va. 533, 538, 95 S.E.2d 192, 197 (1956), Commonwealth ex. Rel. Gray v. Johnson, 7 Va. App. 014, 618, 376 S.E.2d 787, 789 (1989).

Defendant Compliant Corporation's Motion request that this Court take Judicial Notice of Decision of Cuyahoga County OH Court of Common Pleas (Docketed 98) was supported by only a one-page copy of the Decision. Compliant's Motion produced no evidence of the issues raised in the Cuyahoga County action to allow this Court to satisfy itself that the issues were equivalent.

"A plea of *res judicata* will be sustained if the prior adjudication was between the same parties or their privies and a valid final judgment was entered

which resolved the claim on its merits." Waterfront Marine Construction Inc. v. North End 49ers, 251 Va. 417, 430, 468 S.E.2d 894, 902 (1996). Compliant gained the precedent Cuyahoga County decision against the CPR Prompt Corporation that is by law an independent entity and not a party to ("CV126"). As a result the Cuyahoga County "decision" did not involve the same parties.

II. Hutchins Acceded to Compliant's Motion requesting this Court to take Judicial Notice of Decision to allow this Court insight into the Ohio Action.

Compliant's Motion requesting this Court to take judicial notice of the Cuyahoga County "decision" is the culmination of its scheme to undermine CV126. Through evidence supplied by Hutchins in his Motion for Declaratory Judgment: (1) This Court will understand that the Ohio action was filed in reaction to Hutchins' Complaint in CV126; (2) The Ohio action was designed to be used as *res judicata* in CV126; (3) The Ohio Court was looking to this Court for guidance in its decision; (4) Pleadings from the Ohio action prove the validity of Hutchins' Complaint in CV126; (5) The Ohio Action was "rushed to judgment" to pave-the-way for the sale of the Cardiac Science Corporation and the dissolution of the Compliant Corporation, the Defendants in CV126; (6) The damages claimed far exceed the \$75,000 federal limit as pleaded in Hutchins' Motion to Dismiss for Reasons of Personal Jurisdiction cited in the Ohio Case.

III. Conclusion

Compliant Corporation has requested that this Court take Judicial Notice of a Decision by Cuyahoga County OH Court of Common Pleas for the purposes of *res judicata*. Compliant offered no evidence to support this Request. The preponderance of evidence supplied by Hutchins in his Motion for Declaratory

Judgment testifies to the fact that Complient has used the Ohio action to deceive this Court and emasculate Civil Action 30126-MAP.

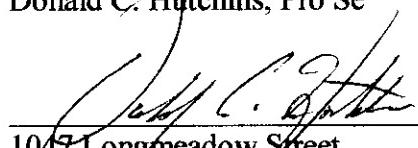
For the foregoing reasons, this Court should grant Hutchins' Motion for Declaratory Judgment.

Respectfully submitted

The Plaintiff

Donald C. Hutchins, Pro Se

Dated: 11/8/05



1047 Longmeadow Street
Longmeadow, Massachusetts 01106
(413) 567-0606
(413) 739-4060 (facsimile)

CERTIFICATE OF SERVICE

I, Donald C. Hutchins, 1047 Longmeadow Street, Longmeadow, Massachusetts 01106, hereby certify that I served a copy of the foregoing on the appropriate party by sending a copy by first-class-mail to:

John J. Egan, Esq.
Egan, Flanagan and Cohen, P.C.
67 Market Street
P.O. Box 9035
Springfield, MA 01102-9035

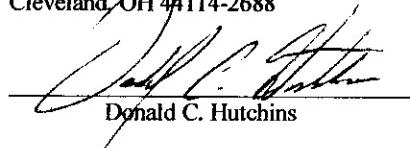
and

Randall T. Skaar, Esq.
Patterson, Thuente, Skaar & Christensen, P.A.
4800 IDS Center
80 South 8th Street
Minneapolis, MN 55402-2100

Paul H. Rothschild, Esq.
Bacon & Wilson, P.C.
33 State Street
Springfield, MA 01103

Colleen Moran O'Neil, Esq.
Calfee, Halter & Griswold LLP
1400 McDonald Investment Center
800 Superior Avenue
Cleveland, OH 44114-2688

Dated: 11/8/05


Donald C. Hutchins